

ST 00-20

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.
OF THE STATE OF ILLINOIS)	Registration No.
)	Assessment Nos.
)	
v.)	
)	
)	
ABC, INC.)	John E. White,
)	Taxpayer
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Gerald Halpin appeared for ABC, Inc.; Marc Muchin appeared for the Illinois Department of Revenue

Synopsis:

This matter involves ABC, Inc.'s ("ABC" or "taxpayer") challenges to late payment penalties assessed by the Department regarding taxpayer's failure to make the minimum amount of certain quarter monthly tax payments.

Findings of Fact:

1. ABC is a dealer and distributor for ABC Corp., a manufacturer of refrigeration units for the transportation industry. Hearing Transcript ("Tr.") p. 9 (testimony of Gerald Halpin ("Halpin")).
2. Taxpayer has five locations in the Midwest, and three of them are in Illinois. Tr. p. 9.

3. Many of taxpayer's purchasers are interstate carriers for hire, whose purchases taxpayer treated as not subject to Illinois retailers' occupation tax ("ROT"). *See* Tr. pp. 9, 21-22 (Halpin, testifying why taxpayer's ROT liability might fluctuate greatly from month to month, depending on what type of sales it made during a given month); 35 ILCS 120/2-5(12); 35 ILCS 120/2-50.
4. The Department issued eight Notices of Assessment ("NOA") to taxpayer. Department Exs. 1-8.
5. The second page of each notice stated, in pertinent part:

Attention

The minimum amount of your quarter-monthly payment is the lesser of

- 22.5 percent of the liability for the liability you are being assessed or
- 25 percent of the same month's liability from the previous year

* * *

We disallowed your discount based on the amount of quarter-monthly payments that were late. This amount is included in the total discount disallowed on the financial page of this assessment.

* * *

E.g., Department Ex. 1, p. 2.

6. NOA number ONE, dated 2/17/99, was issued regarding the month of December 1998. Department Ex. 1.
7. NOA number TWO, dated 3/25/99, was issued regarding the month of February 1999. Department Ex. 2.
8. NOA number THREE, dated 5/20/99, was issued regarding the month of March 1999. Department Ex. 3.

9. NOA number FOUR, dated 6/9/99, was issued regarding the month of April 1999.
Department Ex. 4.
10. NOA number FIVE, dated 8/12/99, was issued regarding the month of June 1999.
Department Ex. 5.
11. NOA number SIX, dated 10/12/99, was issued regarding the month of August 1999. Department Ex. 6.
12. NOA number SEVEN, dated 11/15/99, was issued regarding the month of September 1999. Department Ex. 7.
13. NOA number EIGHT, dated 12/17/99, was issued regarding the month of October 1999. Department Ex. 8.

Conclusions of Law:

Section 3 of the Retailers' Occupation Tax Act provides, in pertinent part:

If the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was \$10,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. ... *If the month during which such tax liability is incurred begins on or after January 1, 1988, and prior to January 1, 1989, or begins on or after January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year.* If the month during which such tax liability is incurred begins on or after January 1, 1989, and prior to January 1, 1996, each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same

calendar month of the preceding year or 100% of the taxpayer's actual liability for the quarter monthly reporting period. The amount of such quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month. ... *If any such quarter monthly payment is not paid at the time or in the amount required by this Section, then the taxpayer shall be liable for penalties and interest on the difference between the minimum amount due as a payment and the amount of such quarter monthly payment actually and timely paid, except insofar as the taxpayer has previously made payments for that month to the Department in excess of the minimum payments previously due as provided in this Section.* The Department shall make reasonable rules and regulations to govern the quarter monthly payment amount and quarter monthly payment dates for taxpayers who file on other than a calendar monthly basis.

* * *

35 ILCS 120/3 (emphasis added).

Section 3-8 of the Uniform Penalty and Interest Act ("UPIA") provides:

No penalties if reasonable cause exists. The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, or 3-5 on the basis of reasonable cause without protesting the underlying tax liability.

35 ILCS 735/3-8. Pursuant to § 3-8 of the UPIA, ABC bears the burden to show that its failure to make timely and/or complete quarter monthly payments was due to reasonable cause. *Id.*

ABC argues that it did not know about a 1996 amendment to Department regulation § 130.535, which eliminated one of the three ways a taxpayer could choose to satisfy its quarter monthly payment obligation. *See* Tr. p. 12-15, 21-22. Prior to the

amendment, a taxpayer could choose to either: (1) pay 22.5% of the taxpayer's actual liability for the month; or (2) pay 25% of the taxpayer's liability for the same calendar month of the preceding year; or (3) pay 100% of the taxpayer's actual liability for the quarter monthly reporting period. 86 Ill. Admin. Code § 130.535(b), 17 Ill. Reg. 19651 (eff. Nov. 2, 1993). For monthly periods beginning on or after January 1, 1996, a taxpayer required to make quarter monthly payments could either: (1) pay 22.5% of the taxpayer's actual liability for the month; or (2) pay 25% of the taxpayer's liability for the same calendar month of the preceding year. 86 Ill. Admin. Code § 130.535(b), 20 Ill. Reg. 6991 (eff. May 7, 1996).

While the Department, in fact, changed the applicable regulation in 1996, I note that it did so because the Illinois General Assembly amended § 3 of the ROTA. *See* 1995 Illinois Legislative Service 3658 (No. 10, West) (P.A. 89-379, § 20, eff. Jan. 1, 1996). Had the Department not amended the applicable regulation, it would have been inconsistent with the statutory provision it purported to interpret. Thus, it was the Illinois legislature, and not the Department, that eliminated the option previously available to taxpayers required to make quarter monthly ROT payments.

Halpin further testified that during the months at issue, taxpayer at all times made timely quarter monthly payments that were equal to its actual tax liability for each particular quarter monthly period. Tr. pp. 12-13. ABC, however, offered no documentary evidence to show what its taxable gross receipts were during each particular quarter monthly period at issue. Nor did it introduce documentary evidence to show how much tax it actually paid during the periods at issue, or to show the dates on which such payments were made. Thus, there is no evidence in the record to corroborate Halpin's

testimony that ABC actually made the payments it claims to have made, that those payments were timely, or that whatever payments it made were, in fact, equal to ABC's actual liability for each quarter monthly period. The law in Illinois is clear that mere testimony does not rebut the Department's prima facie case. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833-34, 527 N.E.2d 1048, 1053 (1st Dist. 1988).

Finally, taxpayer contends that its ignorance of the change in the law was attributable, at least in part, to the Department, because the Department failed to notify it of the change until after it protested the assessments. *See* Tr. pp. 14, 21; Taxpayer Exs. 1-3. That argument, however, is not supported by the record. The notices of assessment themselves informed taxpayer that two options were available for it to use to make minimum quarter monthly tax payments. Specifically, each notice stated, "**Attention** The minimum amount of your quarter-monthly payment is the lesser of ... 22.5 percent of the liability for the liability you are being assessed or ... 25 percent of the same month's liability from the previous year." *E.g.*, Department Ex. 1, p. 2. Taxpayer could not have read those notices and still believed that it was proper to continue to use a payment method that was not listed on each notice, unless that method actually yielded an amount that was greater than one of the two methods authorized by § 3 of the ROTA.

In that crucial respect, the facts of this matter are different than the facts in DuMont Ventilation Co. v. Department of Revenue, 99 Ill. App. 3d 263, 425 N.E.2d 606 (3d Dist. 1981). That case involved a taxpayer's failure to make quarter monthly tax payments of withholding taxes, following a change in the statute that had previously allowed taxpayers to make monthly payments. However, one of the factors the court

identified when overturning the penalty assessed in that case was that, "... the Department itself continued to receive and accept the monthly payments without advising the taxpayer of his delinquencies even though such could have easily been discovered and ascertained from a casual inspection of the remittance schedules." DuMont Ventilation Co., 99 Ill. App. 3d at 266, 425 N.E.2d at 607. Here, the Department did just the opposite; it promptly notified ABC of its deficient quarter monthly payments, and the notices specifically advised ABC as to the two types of minimum quarter monthly payments that were authorized by § 3 of the ROTA.

The notices at issue, moreover, were issued after ABC had already paid prior penalty assessments issued for the same reason, and received an abatement for another. Tr. p. 11. Considering the consistency of the notice forms introduced as evidence in the Department's case-in-chief (Department Exs. 1-8, p. 2), I will presume those prior notices also notified ABC that there were two, not three, minimum quarter monthly payment methods available to it. Thus, even before the notices that are the subject of this hearing were issued, ABC should have been aware that it was no longer proper to continue to use the quarter monthly payment method the legislature decided to eliminate for tax returns filed "... on or after January 1, 1996" 35 ILCS 120/3.

Conclusion:

For all of the foregoing reasons, I recommend the penalties assessed for the pertinent quarter monthly periods during the months of 12/98, 2/99, 3/99, 4/99, 6/99, 8/99 and 9/99 be finalized as issued, and that the penalty assessed for the period of 10/99 be finalized as revised to take into account the correct amount of tax due.

6/21/00
Date

Administrative Law Judge